

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BOYD SMITH,	:	MOTION TO VACATE
Movant,	:	28 U.S.C. § 2255
	:	
v.	:	CRIMINAL INDICTMENT NO.
	:	1:08-CR-0041-JEC-JFK-2
UNITED STATES OF AMERICA,	:	
Respondent.	:	CIVIL FILE NO.
	:	1:11-CV-4015-JEC

ORDER

The matter is before the Court for consideration of the Report and Recommendation (R&R), [Doc. 218], in which the Magistrate Judge recommends that Movant's *pro se* § 2255 motion, as amended by counsel, [Docs. 178, 193], and his motion for a new trial based on newly discovered evidence, [Doc. 195], be denied. Movant has filed his objections to the R&R, [Doc. 221], and this Court must therefore perform a *de novo* review of those portions of the R&R to which Movant objects.

With respect to Movant's objections to the Magistrate Judge's denial of his requests for discovery and a hearing, in reviewing a Magistrate Judge's order on a non-dispositive pretrial matter, this Court determines whether the order is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). Movant points to nothing specific for the Court to review in the material that he lists as showing good cause for

discovery or a hearing. The Court has reviewed the materials Movant presented to the Magistrate Judge in seeking discovery – including the exhibits attached to the motion for discovery, [Doc. 194; Doc. 208 and attached Exhs.], and the Magistrate Judge’s Order denying discovery, [Doc. 212] – and finds no error in the denial of discovery. Movant’s objections regarding the Magistrate Judge’s denial of a hearing are merely a rehashing of the arguments presented to the Magistrate Judge, and this Court agrees with the Magistrate Judge that those arguments are unavailing. The Court does not address Movant’s general objection to the Magistrate Judge’s decision on his belated reply.

Movant purportedly objects to the Magistrate Judge’s conclusion that he failed to establish his claim of ineffective assistance of counsel. However, Movant’s objections amount to nothing more than incorporating the same arguments that he presented to the Magistrate Judge. As such, the objections fail.


This Court further agrees with the Magistrate Judge’s conclusions that Movant’s motion for a new trial is untimely and that, even if the motion were timely, it otherwise fails because Movant had not shown a Brady or Giglio violation.

In summary, Movant’s objections are without merit, and on the matters to which Movant did not object the Court finds no clear error.

IT IS THEREFORE ORDERED that Movant's objections, [Doc. 221], to the order denying discovery and to the Final Report and Recommendation are **OVERRULED** and that the Magistrate Judge's Final Report and Recommendation, [Doc. 218], is **ADOPTED** as the Order of this Court.

IT IS ORDERED that this § 2255 motion, as amended, [Docs. 178, 193], Movant's motion for a new trial, [Doc. 195], and a certificate of appealability are **DENIED**.

IT IS SO ORDERED this 10th day of September, 2014.



WILLIS B. HUNT, JR.
UNITED STATES DISTRICT JUDGE